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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 02/28/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,831

Applicant(s)

METTRIE ET AL.

Examiner

Lorna M. Douyon

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE filed on December 10, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-34 and 36-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-34 and 36-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/875,469.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 10, 2002 has been entered.
2. Claims 30-34 and 36-71 are pending.

Claim Rejections - 35 USC § 112

3. Claim 47 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Formula (V) in line 4 does not correspond to formula (V) in the specification on page 17, line 7 which includes "Br".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 30-34 and 37-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (US Patent No. 5,700,456), hereinafter "Dubief" in view of *International Cosmetic Ingredient Dictionary*.

Dubief teaches hair treating compositions which contain at least one ceramide and/or glyceramide, and at least one cationic polymer (see abstract). The cationic polymers may be of formula (III), which encompasses those of formulae (IV) and (V) as claimed (see col. 3, lines 43-52). The compositions may also contain thickening agents like NATROSOL PLUS (see col. 8, lines 36-45). Dubief also teaches that the compositions may also be used for the dyeing of keratinous fibers such as hair, in which case they contain oxidation dyes and/or direct dyes (see

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col. 9, lines 18-25). Dubief also teaches that the products can also be in the form of thickened liquids (see col. 9, lines 32-34). Dubief also teaches that the pH of the compositions is generally from 2 to 9 (see col. 8, lines 58-61). In Example 6, Dubief teaches a cream oxidation hair dyeing composition which contains a p-phenylenediamine oxidation base, m-phenylenediamine coupler, a cationic polymer as claimed in claim 46, and a reducing agent (sodium sulfite), wherein each component is present in the claimed amounts. The composition is mixed with an oxidant containing 20-volumes of hydrogen peroxide, and the mixture is applied to the hair in a hair dyeing process as claimed. Dubief, however, does not specifically teach (1) the claimed nonionic amphiphilic polymer to both the dye- and oxidant-containing compositions, their proportions, and (2) multi-compartment kits.

The *International Cosmetic Ingredient Dictionary* teaches that NATROSOL PLUS is cetyl (i.e. C₁₆) modified hydroxyethyl cellulose (see page 110, "cetyl hydroxyethylcellulose" entry).

With respect to difference (1), it would have been obvious to one of ordinary skill in the art at the time the invention was made to formulate a thickened composition for the oxidative dyeing of hair which contains an oxidation dye precursor, coupler, direct dye, cationic polymer and cetyl hydroxyethylcellulose nonionic amphiphilic polymer as claimed, wherein each component is present in optimum amounts, and wherein the composition is mixed with a hydrogen peroxide oxidant and is applied to hair as claimed, because such compositions and processes fall within the scope of those taught by Dubief. Particularly, Dubief teaches that the

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oxidative hair dyeing compositions may be in thickened form, and teaches NATROSOL PLUS, which is cetyl hydroxyethylcellulose, as a preferred thickener, therefore, motivating those skilled in the art to select this specific thickener for use in a thickened hair dyeing composition.

Optimization of the amount of nonionic amphiphilic polymer added to such compositions would have been obvious to those skilled in the art in order to obtain the most effective thickening and hair dyeing results, (e.g. an amount which provides easy mixing and prevents dripping from the hair). See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

With respect to difference (2), it would have been obvious to one of ordinary skill in the art to package Dubief's two-part compositions in multicompartment kits because Dubief suggests such kits by teaching separate oxidant- and dye-containing compositions prior to application. The Office holds the position that the claimed compositions and processes which contain and use the nonionic amphiphilic polymer in both the dye- and oxidant-containing compositions are patentably indistinct from Dubief's compositions because equivalent hair dyeing results would be obtained with Dubief's two-part composition, i.e., the application of an oxidation base, coupler, nonionic amphiphilic polymer and oxidant to the hair, absent a showing otherwise.

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Allowable Subject Matter

7. Claim 36 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record teaches, discloses or suggests a composition for the oxidation dyeing of keratin fibers wherein the nonionic amphiphilic polymer is a cellulose containing at least one polyalkylene glycol alkylphenyl ether group. Ascione, US Patent No. 5,670,137, although teaching at least hydroxyethylcellulose which may be Natrosol Plus Grade 330-CS or Amercell Polymer HM-1500, which is a hydroxyethylcellulose modified by a nonoxynyl (nonylphenol) group (see col. 2, lines 17-58) in anhydrous dentrifice composition, fails to teach the modified cellulose in oxidation dyeing of keratin fibers.

8. The prior art made of record and not relied upon is considered pertinent to applicants' disclosure. These references are considered cumulative to or less material than those discussed above.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (703) 305-3773. The examiner can normally be reached on Mondays-Fridays from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Technology Center is:

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(703) 872-9311 - for Official After Final faxes
(703) 872-9310- for all other Official faxes.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center receptionist whose telephone number is (703) 308-0661.

February 25, 2003

Lorna M. Douyon
Lorna M. Douyon
Primary Examiner
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